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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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**Crystal Lagoons U.S. Corp.;**  
**Crystal Lagoons Technologies, Inc.,**

Plaintiffs,

v.

**Cloward H2O LLC,**

Defendant.

Civil No. 2:19-cv-00796-BSJ

**Cloward H2O LLC's Amended Answer  
and Counterclaims in Response to  
Plaintiffs' Third Amended Complaint**

District Judge Bruce S. Jenkins

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## **ANSWER**

Defendant Cloward H2O LLC (“Cloward H2O”) hereby answers the allegations of, and asserts defenses to the purported claims asserted in the Third Amended Complaint (“Complaint”; Docket No. 77) filed on November 16, 2020, on behalf of Plaintiffs Crystal Lagoons U.S. Corp. and Crystal Lagoons Technologies Inc. (collectively, “Crystal Lagoons”), as follows:

### **I. THE PARTIES<sup>1</sup>**

1. Cloward H2O admits on information and belief that Crystal Lagoons U.S. Corp. is a Delaware corporation. Cloward H2O lacks knowledge or information sufficient to form a belief about the remaining allegations of paragraph no. 1 of the Complaint, and therefore denies them.

2. Cloward H2O admits on information and belief that Crystal Lagoons Technologies, Inc. is a Delaware corporation. Cloward H2O lacks knowledge or information sufficient to form a belief about the remaining allegations of paragraph no. 2 of the Complaint, and therefore denies them.

3. Cloward H2O admits that its principal place of business is located at 2696 University Avenue, Suite 290, Provo, Utah 84604. Cloward H2O denies the remaining allegations of paragraph no. 3 of the Complaint.

### **II. JURISDICTION**

4. Cloward H2O admits that the Complaint purports to set forth a claim for patent infringement under the patent laws of the United States. Cloward H2O denies that Crystal

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<sup>1</sup> For ease of reference, Cloward H2O includes in its answer the same headings that are used by Crystal Lagoons in its Third Amended Complaint, but by doing so Cloward H2O does not admit either (a) that any of the information conveyed by the headings is necessarily accurate, or (b) any liability or wrongdoing by Cloward H2O.

Lagoons has statutory standing to bring this action for patent infringement of the asserted patent, including at the time of filing the original complaint.

5. Cloward H2O admits that this Court has subject matter jurisdiction over patent infringement actions. Cloward H2O denies that Crystal Lagoons has statutory standing to bring this action for patent infringement of the asserted patent, including at the time of filing the original complaint.

6. Cloward H2O admits that it is subject to the personal jurisdiction of this Court.

7. Cloward H2O admits that this District is the proper venue for a patent infringement claim against it. Cloward H2O denies that Crystal Lagoons has statutory standing to bring this action for patent infringement of the asserted patent, including at the time of filing the original complaint.

### **III. PATENT OWNERSHIP**

8. Cloward H2O admits that the United States Patent and Trademark Office issued U.S. Patent No. 8,062,514 (“’514 Patent”) and that the ’514 Patent purports to claim priority to U.S. patent application no. 11/819,017 and application no. 3225-2006 filed in Chile.

9. Cloward H2O admits that the assignment records of the United States Patent and Trademark Office reflect a purported assignment of the ’514 Patent to Crystal Lagoons (Curacao) B.V. dated March 8, 2013. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the remaining allegations of paragraph no. 9 of the Complaint, and on that basis denies them.

10. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 10 of the Complaint, and on that basis denies them.

11. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 11 of the Complaint, and on that basis denies them.

12. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 12 of the Complaint, and on that basis denies them.

13. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 13 of the Complaint, and on that basis denies them.

14. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 14 of the Complaint, and on that basis denies them.

15. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 15 of the Complaint, and on that basis denies them.

#### **IV. BACKGROUND OF CONVENTIONAL SWIMMING POOLS AND CRYSTAL LAGOONS' INNOVATIVE LAGOON TECHNOLOGY**

16. Cloward H2O denies that the accused structure uses any patented technology of the '514 Patent. Cloward H2O lacks knowledge or information sufficient to form a belief about the

truth or accuracy of the remaining allegations of paragraph no. 9 of the Complaint, and on that basis denies them.

17. Cloward H2O admits that Figure 4 purports to show an annotated photograph of pools at the Hard Rock Hollywood Hotel and Casino. Cloward H2O denies and disputes the characterization of those pools in the annotations and allegations of paragraph no. 17 of the Complaint. Cloward H2O denies that the accused structure uses Crystal Lagoons' technology or any patented technology of the '514 Patent. Cloward H2O denies the remaining allegations of paragraph no. 17 of the Complaint.

18. Cloward H2O denies the allegations of paragraph no. 18 of the Complaint.

## **V. STRUCTURE PATENT INFRINGEMENT**

19. Cloward H2O admits that Crystal Lagoons purported patent infringement claim relates to the '514 Patent. Cloward H2O denies that other patents are not relevant to the interpretation of the scope of the '514 Patent. Cloward H2O denies the remaining allegations of paragraph no. 19 of the Complaint.

20. Cloward H2O denies the allegations of paragraph no. 20 of the Complaint.

21. The claims of the '514 Patent are set forth in the '514 Patent, and Cloward H2O denies that the claims of the '514 Patent should be interpreted without reference to the specification and prosecution history of the '514 Patent and related patents. Cloward H2O denies any remaining allegations of paragraph no. 21 of the Complaint.

21.1. Cloward H2O denies the allegations of paragraph no. 21.1 of the Complaint.

21.2. Cloward H2O denies the allegations of paragraph no. 21.2 of the Complaint.

21.3. Cloward H2O denies the allegations of paragraph no. 21.3 of the Complaint.

21.4. Cloward H2O denies the allegations of paragraph no. 21.4 of the Complaint.

21.5. Cloward H2O denies the allegations of paragraph no. 21.5 of the Complaint.

21.6. Cloward H2O denies the allegations of paragraph no. 21.6 of the Complaint.

21.7. Cloward H2O denies the allegations of paragraph no. 21.7 of the Complaint.

22. Paragraph No. 22 of the Complaint simply recites “NOTE 1: Walls,” which is not an allegation. Cloward H2O denies the allegations of paragraph no. 22 of the Complaint, if any.

22.1. Cloward H2O admits that the references photos show a plastic liner. Cloward H2O denies that the photos show a plastic liner used in a way that infringes the ’514 Patent, and Cloward H2O denies that it made, used, sold, or imported the plastic liner shown in the photographs. Cloward H2O denies the remaining allegations of paragraph no. 22 of the Complaint.

22.2. Cloward H2O denies the allegations of paragraph no. 22.2 of the Complaint.

22.3. Cloward H2O denies the allegations of paragraph no. 22.3 of the Complaint.

22.4. Cloward H2O denies the allegations of paragraph no. 22.4 of the Complaint.

22.5. Cloward H2O denies the allegations of paragraph no. 22.5 of the Complaint.

22.6. Cloward H2O denies the allegations of paragraph no. 22.6 of the Complaint.

22.7. Cloward H2O denies the allegations of paragraph no. 22.7 of the Complaint.

23. Cloward H2O denies the allegations of paragraph no. 23 of the Complaint.

23.1. Cloward H2O denies the allegations regarding the interpretation of the ’514 Patent in of paragraph no. 23.1 of the Complaint. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the remaining allegations of paragraph no. 23.1 of the Complaint, and on that basis denies them.

23.2. Cloward H2O denies the allegations of paragraph no. 23.2 of the Complaint.

23.3. Cloward H2O denies the allegations of paragraph no. 23.3 of the Complaint.

23.4. Cloward H2O denies the allegations of paragraph no. 23.4 of the Complaint.

24. Paragraph No. 24 of the Complaint simply recites “NOTE 2: Skimmers,” which is not an allegation. Cloward H2O denies the allegations of paragraph no. 24 of the Complaint, if any.

24.1. Cloward H2O denies the allegations of paragraph no. 24.1 of the Complaint because, among other things, it cannot determine the authenticity of Figure 16.

24.2. Cloward H2O denies the allegations of paragraph no. 24.2 of the Complaint.

25. Paragraph No. 25 of the Complaint simply recites “NOTE 3: Pumping System,” which is not an allegation. Cloward H2O denies the allegations of paragraph no. 25 of the Complaint, if any.

25.1. Cloward H2O denies the allegations of paragraph no. 25.1 of the Complaint.

25.2. Cloward H2O denies the allegations of paragraph no. 25.2 of the Complaint.

## **VI. WATER TREATMENT TECHNOLOGY**

Cloward H2O denies the unnumbered allegation that “WHAT CLOWARD BUILT IS SOMETHING THEY HAVE NEVER BUILT BEFORE, AND IT IS NOT A SWIMMING POOL LIKE THE ONES THEY BUILT IN THE VICINITY OF THE LAGOON.”

26. Cloward H2O admits that traditional swimming pool filtration technologies include, but are not limited to, filtration systems that filter the entire volume of water. Cloward H2O denies the remaining allegations of paragraph no. 26, including its subparts (1) and (2), of the Complaint.

27. Cloward H2O denies the allegations of paragraph no. 27 of the Complaint.

28. Cloward H2O denies the allegations of paragraph no. 28 of the Complaint.

29. Cloward H2O denies the allegations of paragraph no. 29 of the Complaint.

***The '822 patent***

30. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30 of the Complaint.

30.1. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30.1 of the Complaint.

30.2. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30.2 of the Complaint.

30.3. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30.3 of the Complaint.

30.4. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the

specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30.4 of the Complaint.

30.5. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30.5 of the Complaint.

30.6. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30.6 of the Complaint.

30.7. The claims of the '822 Patent are set forth in the '822 Patent, and Cloward H2O denies that the claims of the '822 Patent should be interpreted without reference to the specification and prosecution history of the '822 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 30.7 of the Complaint.

31. Paragraph No. 31 of the Complaint simply recites "NOTE 4: Filtration System," which is not an allegation. Cloward H2O denies the allegations of paragraph no. 31 of the Complaint, if any.

31.1. Cloward H2O denies the allegations of paragraph no. 31.1 of the Complaint.

31.2. Cloward H2O admits that inlets recirculate water in the swimming lake. Cloward H2O denies the remaining allegations of paragraph no. 31.2 of the Complaint.

31.3. Cloward H2O admits that, to the best of its knowledge, the swimming lake was built according to its plans. Cloward H2O denies the remaining allegations of paragraph no. 31.3 of the Complaint.

31.4. Cloward H2O denies the allegations of paragraph no. 31.4 of the Complaint.

31.5. Cloward H2O denies the allegations of paragraph no. 31.5 of the Complaint.

31.6. Cloward H2O denies the allegations of paragraph no. 31.6 of the Complaint.

31.7. Cloward H2O denies that the swimming lake was designed for or requires the use of flocculants. Cloward H2O lacks information sufficient to admit or deny the conduct of third parties not under Cloward H2O's control. Cloward H2O denies the remaining allegations of paragraph no. 31.7 of the Complaint. Cloward H2O also denies the allegations of the unnumbered paragraph following Figure 32 of the Complaint.

31.8. Cloward H2O lacks information sufficient to admit or deny the conduct of Crystal Lagoons in which it was not involved. Cloward H2O denies the remaining allegations of paragraph no. 31.8 of the Complaint.

31.9. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 31.9 of the Complaint, and on that basis denies them.

31.10. Cloward H2O denies the allegations of paragraph no. 31.10 of the Complaint.

31.11. Cloward H2O denies the allegations of paragraph no. 31.11 of the Complaint.

### ***The '520 Patent***

32. The claims of the '520 Patent are set forth in the '520 Patent, and Cloward H2O denies that the claims of the '520 Patent should be interpreted without reference to the

specification and prosecution history of the '520 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 32 of the Complaint.

32.1. The claims of the '520 Patent are set forth in the '520 Patent, and Cloward H2O denies that the claims of the '520 Patent should be interpreted without reference to the specification and prosecution history of the '520 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 32.1 of the Complaint.

32.2. The claims of the '520 Patent are set forth in the '520 Patent, and Cloward H2O denies that the claims of the '520 Patent should be interpreted without reference to the specification and prosecution history of the '520 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 32.2 of the Complaint.

32.3. The claims of the '520 Patent are set forth in the '520 Patent, and Cloward H2O denies that the claims of the '520 Patent should be interpreted without reference to the specification and prosecution history of the '520 Patent and related patents. Cloward H2O denies the remaining allegations of paragraph no. 32.3 of the Complaint.

## **VII. IMPORTANCE AND VALUE OF CRYSTAL LAGOONS TECHNOLOGY**

33. Cloward H2O denies the allegations of paragraph no. 33 of the Complaint.

34. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 34 of the Complaint, and on that basis denies them.

35. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 35 of the Complaint, and on that basis denies them.

36. Cloward H2O denies the allegations of paragraph no. 36 of the Complaint.
37. Cloward H2O denies the allegations of paragraph no. 37 of the Complaint.
38. Cloward H2O denies the allegations of paragraph no. 38 of the Complaint, due at least to the vagaries of the terminology used in paragraph no. 38.
39. Cloward H2O denies the allegations of paragraph no. 39 of the Complaint.
40. Cloward H2O denies the allegations of paragraph no. 40 of the Complaint.
41. Cloward H2O denies that there is anything new or innovative about Crystal Lagoons' maintenance. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the remaining allegations of paragraph no. 41 of the Complaint, and on that basis denies them.
42. Cloward H2O denies the allegations of paragraph no. 42 of the Complaint.
43. Cloward H2O denies that there is anything new or innovative about Crystal Lagoons' maintenance. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the remaining allegations of paragraph no. 43 of the Complaint, and on that basis denies them.
44. Cloward H2O denies the allegations of paragraph no. 44 of the Complaint.
45. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 45 of the Complaint, and on that basis denies them.
46. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 46 of the Complaint, and on that basis denies them.

47. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the allegations of paragraph no. 47 of the Complaint, and on that basis denies them.

### **VIII. DIRECT AND INDUCED INFRINGEMENT OF THE '514 PATENT (STRUCTURE PATENT)**

With respect to the unnumbered allegation that “CLOWARD WAS THE CREATOR OF THE PLANS AND TECHNICAL SPECIFICATIONS THAT ALLOWED FOR THE CONSTRUCTION OF THE HARD ROCK LAGOON,” Cloward H2O admits that it provided engineering plans for the accused swimming lake. Cloward H2O denies all allegations of infringement of the '514 Patent. Cloward H2O denies that remaining allegations of this unnumbered allegation of the Complaint.

48. Cloward H2O denies the allegations of paragraph no. 48 of the Complaint.

49. Cloward H2O denies the allegations of paragraph no. 49 of the Complaint.

50. Cloward H2O admits that it was the aquatic engineer for the accused swimming lake. Cloward H2O denies all allegations of infringement of the '514 Patent. Cloward H2O denies the remaining allegations of paragraph no. 50 of the Complaint.

51. Cloward H2O admits that it provided engineering designs for the accused swimming lake. Cloward H2O denies all allegations of infringement of the '514 Patent. Cloward H2O denies the remaining allegations of paragraph no. 51 of the Complaint.

52. Cloward H2O admits that its website states the following: “We specialize in all things water. Our team’s dedicated attention touches every aspect of a project, starting with the planning stages and powering through to final implementation and maintenance.” Cloward H2O denies the remaining allegations of paragraph no. 52 of the Complaint.

53. Cloward H2O denies the allegations of paragraph no. 53 of the Complaint.
54. Cloward H2O denies the allegations of paragraph no. 54 of the Complaint.
55. Cloward H2O denies the allegations of paragraph no. 55 of the Complaint.
56. Cloward H2O admits that it was an engineer for the accused swimming lake and that it provided engineering plans and drawings therefor. Cloward H2O also admits that it did not construct the accused swimming lake but rather that the accused swimming lake was constructed by others. Cloward H2O denies all allegations of infringement of the '514 Patent. Cloward H2O denies the remaining allegations of paragraph no. 56 of the Complaint.
57. Cloward H2O denies the allegations of paragraph no. 57 of the Complaint.
58. Cloward H2O denies the allegations of paragraph no. 58 of the Complaint.
59. Cloward H2O denies the allegations of paragraph no. 59 of the Complaint.
60. Cloward H2O denies the allegations of paragraph no. 60 of the Complaint.
61. Cloward H2O admits that its name appears on its plans for the accused swimming lake. Cloward H2O denies all allegations of infringement of the '514 Patent. Cloward H2O denies the remaining allegations of paragraph no. 61 of the Complaint.
62. Cloward H2O denies the allegations of paragraph no. 62 of the Complaint.
63. Cloward H2O denies the allegations of paragraph no. 63 of the Complaint.
64. Cloward H2O denies the allegations of paragraph no. 64 of the Complaint.
65. Cloward H2O denies the allegations of paragraph no. 65 of the Complaint.
66. Cloward H2O denies the allegations of paragraph no. 66 of the Complaint.

67. Cloward H2O admits to the content of its plans as state in the plans themselves and in their proper context. Cloward H2O denies the remaining allegations of paragraph no. 67 of the Complaint.

**IX. DIRECT AND INDUCED INFRINGEMENT OF THE '822 PATENT**

68. Cloward H2O admits that it was the aquatic engineer for the accused swimming lake and admits that it provided engineering designs for the accused swimming lake. Cloward H2O denies all allegations of infringement of the '822 Patent. Cloward H2O denies the remaining allegations of paragraph no. 68 of the Complaint.

69. Cloward H2O denies the allegations of paragraph no. 69 of the Complaint.

70. Cloward H2O denies the allegations of paragraph no. 70 of the Complaint.

71. Cloward H2O denies the allegations of paragraph no. 71 of the Complaint.

72. Cloward H2O denies the allegations of paragraph no. 72 of the Complaint.

73. Cloward H2O denies the allegations of paragraph no. 73 of the Complaint.

74. Cloward H2O denies the allegations of paragraph no. 74 of the Complaint.

75. Cloward H2O denies the allegations of paragraph no. 75 of the Complaint.

**X. DIRECT AND INDUCED INFRINGEMENT OF THE '520 PATENT**

76. Cloward H2O admits that it was the aquatic engineer for the accused swimming lake and admits that it provided engineering designs for the accused swimming lake. Cloward H2O denies all allegations of infringement of the '520 Patent. Cloward H2O denies the remaining allegations of paragraph no. 76 of the Complaint.

77. Cloward H2O denies the allegations of paragraph no. 77 of the Complaint.

78. Cloward H2O denies the allegations of paragraph no. 78 of the Complaint.

- 79. Cloward H2O denies the allegations of paragraph no. 79 of the Complaint.
- 80. Cloward H2O denies the allegations of paragraph no. 80 of the Complaint.
- 81. Cloward H2O denies the allegations of paragraph no. 81 of the Complaint.
- 82. Cloward H2O denies the allegations of paragraph no. 82 of the Complaint.
- 83. Cloward H2O denies the allegations of paragraph no. 83 of the Complaint.

**XI. DAMAGES AND HARM TO PLAINTIFFS FROM THE  
DIRECT AND INDUCED INFRINGEMENT**

- 84. Cloward H2O denies the allegations of paragraph no. 84 of the Complaint.
- 85. Cloward H2O denies the allegations of paragraph no. 85 of the Complaint.
- 86. Cloward H2O denies the allegations of paragraph no. 86 of the Complaint.
- 87. Cloward H2O denies the allegations of paragraph no. 87 of the Complaint.
- 88. Cloward H2O denies the allegations of paragraph no. 88 of the Complaint.
- 89. Cloward H2O denies that Crystal Lagoons has been harmed by any actions attributable to Cloward H2O. Cloward H2O lacks knowledge or information sufficient to form a belief about the truth or accuracy of the remaining allegations of paragraph no. 89 of the Complaint, and on that basis denies them.

- 90. Cloward H2O denies the allegations of paragraph no. 90 of the Complaint.
- 91. Cloward H2O denies the allegations of paragraph no. 91 of the Complaint.
- 92. Cloward H2O denies the allegations of paragraph no. 92 of the Complaint.
- 93. Cloward H2O denies the allegations of paragraph no. 93 of the Complaint.
- 94. Cloward H2O denies the allegations of paragraph no. 94 of the Complaint.
- 95. Cloward H2O denies the allegations of paragraph no. 95 of the Complaint.

## **XII. REQUEST FOR RELIEF**

Cloward H2O is not required, under Rule 8, to respond to the relief requested in the Complaint. Nonetheless, to the extent that any of the statements or assertions under that heading may be deemed to allege any factual or legal entitlements to the relief requested, Cloward H2O denies each and every such allegation, and specifically denies that Crystal Lagoons is entitled to the request, or any, relief.

### **GENERAL DENIAL**

Cloward H2O denies any and all allegations in the Complaint that are not specifically admitted in Cloward H2O's answer and responses above.

### **JURY DEMAND**

Cloward H2O demands trial by jury of all issues so triable.

### **ADDITIONAL, AFFIRMATIVE, AND AVOIDANCE DEFENSES**

Without admitting or acknowledging what must be alleged by way of affirmative or avoidance defenses or that Cloward H2O bears the burden of proof as to any of the defenses set forth herein; Cloward H2O alleges the following as additional, affirmative, or avoidance defenses to the Complaint, the purported claims therein, and the relief sought therein.

#### ***First Defense—Failure to State a Claim***

The Complaint fails to state a claim against Cloward H2O upon which relief can be granted.

#### ***Second Defense—Non-Infringement***

Cloward H2O has not infringed, either literally, contributorily or under the doctrine of equivalents, or contributed to infringement by others, or actively induced others to infringe the Asserted Patents.

***Third Defense—Failure to Mark***

Crystal Lagoons is precluded from recovering any damages arising from Cloward H2O's alleged infringement before the filing and service of the Complaint due to the failure of Crystal Lagoons to give proper notice pursuant to 35 U.S.C. § 287.

***Fourth Defense—Waiver and Estoppel***

Crystal Lagoons, by its own conduct and omissions, are estopped from asserting, and have waived any claim for, any alleged wrongful or improper conduct on the part of Cloward H2O.

***Fifth Defense—Unclean Hands***

Crystal Lagoons' claims are barred, in whole or in part, by their own unclean hands.

***Sixth Defense—Laches***

Crystal Lagoons' claims fail, in whole or in part, by the doctrine of laches.

***Seventh Defense—Prosecution History Estoppel***

Crystal Lagoons' claims of patent infringement against Cloward H2O are barred in whole or in part by the doctrines of prosecution history estoppel or prosecution disclaims, ensnarement, or claim vitiation.

***Eighth Defense—Lack of Statutory Standing***

Crystal Lagoons' lacks statutory standing to bring patent infringement claims on the '514 Patent, including a lack of statutory standing at the time of filing the original complaint.

***Ninth Defense—Patent Misuse***

Crystal Lagoons claims are barred because of its own patent misuse.

***Tenth Defense—Invalidity***

The claims of the Asserted Patents are invalid for failure to satisfy one or more of the requirements of Sections 100, 101, 102, 103, and 112 of Title 35 of the United States Code.

***Eleventh Defense—No Entitlement to Injunctive Relief***

Crystal Lagoons is not entitled to injunctive relief under 35 U.S.C. § 283.

***Twelfth Defense—Inequitable Conduct***

The Asserted Patents are unenforceable due to inequitable conduct committed during the prosecution of the Asserted Patents or their related patents before the United States Patent and Trademark Office.

***Further Defenses***

In addition to the defenses set forth above, Cloward H2O reserves the right to raise, assert, rely upon, or add any new or additional defenses under Rule 8(c), the laws of the United States, the laws of Utah, or any other governing jurisdictions that may exist or in the future be applicable based on discovery and further factual investigation in this Action, and reserves the right to amend any and all defenses set forth above as discovery proceeds.

**COUNTERCLAIMS**

Counterclaimant Crystal Lagoons brings these counterclaims against Plaintiffs Crystal Lagoons U.S. Corp. and Crystal Lagoons Technologies Inc. (collectively, “Crystal Lagoons”) as follows:

1. This action arises and is brought under the Declaratory Judgement Act, 28 U.S.C. §§ 2201–2202 and seeks a declaration that Cloward H2O does not infringe any of U.S. Patent Nos. 8,062,514 (“514 Patent”), 8,753,520 (“520 Patent”), and 9,708,822 (“822 Patent”) (collectively, “Asserted Patents”), and that the Asserted Patents are invalid.
2. Cloward H2O is an Alaskan limited liability company with its principal place of business in Provo, Utah.

3. Cloward H2O alleges on information and belief that Crystal Lagoons U.S. Corp. is a Delaware corporation.

4. Cloward H2O alleges on information and belief that Crystal Lagoons Technologies, Inc. is a Delaware corporation.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201–02, and 35 U.S.C. § 101 *et seq.*

6. This Court has personal jurisdiction over Crystal Lagoons at least by virtue of Crystal Lagoons' election to file suit in this District.

7. Venue is proper pursuant to at least 28 U.S.C. § 1391.

8. Crystal Lagoons' Complaint alleges that Cloward H2O infringes the Asserted Patents.

9. Cloward H2O denies any alleged patent infringement of the Asserted Patents.

**FIRST COUNTERCLAIM  
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '514 PATENT**

10. Cloward H2O hereby realleges and incorporates the forgoing paragraphs of the Counterclaims as if set forth in full hereat.

11. Cloward H2O has not infringed and does not infringe, either literally or under the doctrine of equivalents, any valid and enforceable asserted claim of the '514 Patent.

12. Cloward H2O has not infringed and does not infringe, either contributorily, by inducement, or in any other manner, any valid and enforceable asserted claim of the '514 Patent.

13. An actual and justiciable controversy exists between Crystal Lagoons and Cloward H2O regarding Crystal Lagoons' allegations that Cloward H2O infringes the '514 Patent.

14. Cloward H2O is entitled to a declaration of this Court stating that it has not infringed and does not infringe the '514 Patent in any manner whatsoever.

15. Cloward H2O additionally seeks any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

**SECOND COUNTERCLAIM  
DECLARATORY JUDGMENT OF INVALIDITY OF THE '514 PATENT**

16. Cloward H2O hereby realleges and incorporates the forgoing paragraphs of the Counterclaims as if set forth in full hereat.

17. Each of the asserted claims of the '514 Patent is invalid for failure to comply with the requirements of patentability, including those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

18. An actual justiciable controversy exists between Crystal Lagoons and Cloward H2O regarding the validity of the '514 Patent.

19. Cloward H2O is entitled to a declaration of this Court stating that the asserted claims of the '514 Patent are invalid.

20. Cloward H2O additionally seeks any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

**THIRD COUNTERCLAIM  
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '520 PATENT**

21. Cloward H2O hereby realleges and incorporates the forgoing paragraphs of the Counterclaims as if set forth in full hereat.

22. Cloward H2O has not infringed and does not infringe, either literally or under the doctrine of equivalents, any valid and enforceable asserted claim of the '520 Patent.

23. Cloward H2O has not infringed and does not infringe, either contributorily, by inducement, or in any other manner, any valid and enforceable asserted claim of the '520 Patent.

24. An actual and justiciable controversy exists between Crystal Lagoons and Cloward H2O regarding Crystal Lagoons' allegations that Cloward H2O infringes the '520 Patent.

25. Cloward H2O is entitled to a declaration of this Court stating that it has not infringed and does not infringe the '520 Patent in any manner whatsoever.

26. Cloward H2O additionally seeks any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

**FOURTH COUNTERCLAIM  
DECLARATORY JUDGMENT OF INVALIDITY OF THE '520 PATENT**

27. Cloward H2O hereby realleges and incorporates the forgoing paragraphs of the Counterclaims as if set forth in full hereat.

28. Each of the asserted claims of the '520 Patent is invalid for failure to comply with the requirements of patentability, including those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

29. An actual justiciable controversy exists between Crystal Lagoons and Cloward H2O regarding the validity of the '520 Patent.

30. Cloward H2O is entitled to a declaration of this Court stating that the asserted claims of the '520 Patent are invalid.

31. Cloward H2O additionally seeks any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

**FIFTH COUNTERCLAIM**  
**DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '822 PATENT**

32. Cloward H2O hereby realleges and incorporates the forgoing paragraphs of the Counterclaims as if set forth in full hereat.

33. Cloward H2O has not infringed and does not infringe, either literally or under the doctrine of equivalents, any valid and enforceable asserted claim of the '822 Patent.

34. Cloward H2O has not infringed and does not infringe, either contributorily, by inducement, or in any other manner, any valid and enforceable asserted claim of the '822 Patent.

35. An actual and justiciable controversy exists between Crystal Lagoons and Cloward H2O regarding Crystal Lagoons' allegations that Cloward H2O infringes the '822 Patent.

36. Cloward H2O is entitled to a declaration of this Court stating that it has not infringed and does not infringe the '822 Patent in any manner whatsoever.

37. Cloward H2O additionally seeks any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

**SECOND COUNTERCLAIM**  
**DECLARATORY JUDGMENT OF INVALIDITY OF THE '822 PATENT**

38. Cloward H2O hereby realleges and incorporates the forgoing paragraphs of the Counterclaims as if set forth in full hereat.

39. Each of the asserted claims of the '822 Patent is invalid for failure to comply with the requirements of patentability, including those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

40. An actual justiciable controversy exists between Crystal Lagoons and Cloward H2O regarding the validity of the '822 Patent.

41. Cloward H2O is entitled to a declaration of this Court stating that the asserted claims of the '822 Patent are invalid.

42. Cloward H2O additionally seeks any further relief deemed appropriate by this Court pursuant to 28 U.S.C. § 2202.

### **JURY DEMAND**

Pursuant to Rule 38, Cloward H2O demands trial by jury of all issues so triable, whether presented by Crystal Lagoons' claims against Cloward H2O, Cloward H2O's Counterclaims against Crystal Lagoons, or otherwise.

### **PRAYER FOR RELIEF**

WHEREFORE, Cloward H2O requests relief as follows:

- A. That Cloward H2O take nothing by the Complaint;
- B. A declaration that Cloward H2O does not infringe, induce infringement, or contributorily infringe any valid and enforceable claim of the '514 Patent;
- C. A declaration that Cloward H2O does not infringe, induce infringement, or contributorily infringe any valid and enforceable claim of the '520 Patent;
- D. A declaration that Cloward H2O does not infringe, induce infringement, or contributorily infringe any valid and enforceable claim of the '822 Patent;
- E. A declaration that Crystal Lagoons' asserted claims from the '514 Patent are invalid;
- F. A declaration that Crystal Lagoons' asserted claims from the '520 Patent are invalid;
- G. A declaration that Crystal Lagoons' asserted claims from the '822 Patent are invalid;

- H. A declaration that Crystal Lagoons' claims are meritless and exceptional;
- I. An award of Cloward H2O's costs of suit, attorney's fees, and expenses in defending against this suit; and
- J. Such other and further relief as this Court shall deem just and proper.

Dated: February 23, 2020.

Respectfully Submitted,

MASCHOFF BRENNAN

By: /s/ Jared J. Braithwaite

Jared J. Braithwaite

Daniel R. Barber

Alexis K. Juergens

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